

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3317 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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MARGABEN VITHALBHAI

Versus

STATE OF GUJARAT

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Appearance:

MRS DT SHAH for the Petitioners

MR VB GHARANIA for the respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 26/06/96

ORAL JUDGEMENT

1. This Special Civil Application is directed against the orders dated 11th August, 1994 and 16th August, 1994 in Recovery applications no.229/93 and 230/93 passed by the Labour court, Surendranagar. The order dated 16th August, 1994 passed in Recovery application No.230/93 is in relation to the petitioners

no.1 to 4 and the order dated 11th August, 1994 passed in Recovery application no.229/93 is in relation to petitioner no.5. The petitioners no.1 to 4 had been terminated on 21-7-1983 and the award was passed in their favour on 17th July, 1991 to the effect that they have to be reinstated with continuity of service and 50% back wages. These petitioners were reinstated on 15th October, 1992. There is no dispute that they have been reinstated and the entire dues upto the date of the award have been paid. The dispute in the present Sp. Civil Application which the learned counsel for the petitioners, for these four petitioners has raised is with regard to the period from 17th July, 1991 to 14th October, 1992 i.e. from the date of the award till the reinstatement.

2. The petitioner no.5 was terminated on 21-7-1983 and the award in her case was passed on 12th November, 1991 granting the relief of reinstatement with continuity of service and 40% back wages. She was reinstated on 14th August, 1992 and the entire dues in terms of the award upto the date of the award have already been paid. Now the dispute in the case of petitioner no.5 is for the period from 12th November, 1991 i.e. the date of the award to 13th August, 1992 i.e. prior to the date of reinstatement.

3. The petitioners no.1 to 4 had moved an application under sec. 33-C(1) on 28th April, 1993 and the petitioner no.5 had moved an application under sec. 33-C(1) of the Industrial Disputes Act on 27th April, 1993. These applications were decided by the impugned orders dated 16th August, 1994 and 11th August, 1994 passed in Recovery application no.230/93 and 229/93 respectively. The learned counsel for the petitioners has submitted that all the dues upto the date of the award have been paid and received, but her grievance is that the petitioners have not been paid full dues in accordance with law for the period i.e. from the date of the award till the date of the reinstatement. It has been submitted that the petitioners were entitled to be paid the minimum wages at the rates which were prevalent during the respective periods i.e. the period between the date of the award and the date of their reinstatement whereas vide impugned orders they have been granted wages at the rate of Rs.12-10 only, which was the rate applicable at the time of their termination and this rate of Rs.12-10 could be relevant only for the purpose of computing back wages prior to the date of the award and not for the period subsequent to the date of the award. Learned counsel for the petitioners also invited my

attention to an order dated 1-9-1992 passed by the Division Bench of this Court in Miscellaneous Contempt Applications No.1641/91, 1049/92, 1051/92 and 1052/92 in relation to the References (LCS) No.441/89 to 444/89. On the basis of this order, it is submitted that the petitioners were entitled to the wages even for the period between the date of the award and the reinstatement. The learned counsel for the petitioners failed to point out as to whether this order dated 1-9-1992 was in fact produced before the Labour Court in the Reference applications no.230/93 and 229/93 or not. In any case, it is clearly borne out from the record that the petitioners had moved before the Labour Court Recovery Applications under sec.33-C(1) of the Industrial Disputes Act and the Labour Court in the orders dated 11th August, 1994 and 16th August, 1994 has categorically held that the claim with regard to the period beyond the date of the award could be agitated only under sec.33-C(2) of the Industrial Disputes Act. In view of the admitted factual position with regard to the fact that the disputed period is the period subsequent to the date of the award for which there is neither any settlement nor any award, the petitioners could only agitate their claim under sec. 33-C(2) of the Industrial Disputes Act and the order passed by the Labour Court in the Reference Applications do not suffer from any infirmity so as to warrant interference by this Court. If the petitioners are aggrieved for this period subsequent to the award, that they should have been paid the minimum wages at the rates which were prevalent during this period and not at the rate which was there at the time of their termination, it was open for them to have moved appropriate applications under sec. 33-C(2) in accordance with law.

4. Be that as it may, I do not find any basis to interfere with the impugned orders dated 16th August, 1994 and 11th August, 1994 passed in the Recovery Applications no.230/93 and 229/93 by the Labour Court, Surendranagar. In the result, this Special Civil Application must fail and the same is hereby dismissed. The rule is hereby discharged. No order as to costs.

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